

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #6	CCRB Case #: 201502521	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 04/02/2015 2:00 PM	Location of Incident: Clay Avenue and East 175th Street; 46th Precinct Stationhouse	Precinct: 46	18 Mo. SOL 10/2/2016	EO SOL 10/2/2016	
Date/Time CV Reported Fri, 04/03/2015 12:52 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/03/2015 12:52 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Carlos Pineda	07963	952118	046 PCT
2. SGT Edward Arias	5050	941358	046 PCT
3. POM Gary Capellan	07470	950154	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Daniel Almeida	14076	951495	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Edward Arias	Abuse: On Clay Avenue and East 175th Street, in the Bronx, Sgt. Edward Arias stopped § 87(2)(b) and § 87(2)(b)	
B.SGT Edward Arias	Abuse: At the 46th Precinct stationhouse, Sgt. Edward Arias authorized the search of the car in which § 87(2)(b) was an occupant.	
C.POM Gary Capellan	Abuse: At the 46th Precinct stationhouse, PO Gary Capellan searched § 87(2)(b)s and § 87(2)(b)s bags.	
D.POM Carlos Pineda	Abuse: At the 46th Precinct stationhouse, PO Carlos Pineda threatened to arrest § 87(2)(b) and § 87(2)(b)	

Case Summary

On April 3, 2015, § 87(2)(b) filed this complaint with the CCRB via phone.

On April 2, 2015, at approximately 2 p.m., Sgt. Edward Arias approached and stopped § 87(2)(b) as they sat in § 87(2)(b)'s double parked vehicle on the corner of Clay Avenue and East 175th Street, in the Bronx (**Allegation A**). After a short encounter, § 87(2)(b) and § 87(2)(b) were both arrested on the scene. They were transported back to the stationhouse by PO Daniel Almeida. PO Gary Capellan subsequently drove § 87(2)(b)'s vehicle back to the stationhouse. At the stationhouse, Sgt. Arias authorized PO Capellan to conduct a search of § 87(2)(b)'s vehicle (**Allegation B**). § 87(2)(b)'s and § 87(2)(b)'s bags inside the vehicle were also searched in the process (**Allegation C**). § 87(2)(a) 160.50
§ 87(2)(b) When § 87(2)(b) and § 87(2)(b) were being released PO Carlos Pineda threatened to arrest them if they ever returned back to the area (**Allegation D**).

Mediation, Civil and Criminal Histories

This case is mediation unsuitable because § 87(2)(b) and § 87(2)(b) filed a Notice of Claim seeking \$250,000 in regards to this incident (Board Review 07). § 87(2)(a) Gen. Mun. § 50-h(3)

(Board Review 01 and 02). § 87(2)(b)

§ 87(2)(a) 160.50

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) (Board Review 14).
- This is the first CCRB complaint filed by § 87(2)(b) (Board review 15).
- Sgt. Arias has been a member of the NYPD for 9 years and had 10 prior CCRB allegations involving four cases. None of his prior CCRB allegations were substantiated or § 87(2)(g)
- PO Capellan has been a member of the NYPD for 4 years and had three prior CCRB allegations involving two cases which were closed as complainant uncooperative. Moreover, § 87(2)(g)
- PO Pineda has been a member of then NYPD for 3 years and had seven prior CCRB allegations involving three cases. PO Pineda has no substantiated allegations and had one prior threat of arrest allegation that was closed as complainant uncooperative.

Witness:

§ 87(2)(b) (**Board Review 18**)-

§ 87(2)(b) is § 87(2)(b)'s son and she provided his contact information to the CCRB. § 87(2)(b) provided a phone statement on April 20, 2015.

§ 87(2)(b) did not witness any police interaction or see any police officers during the incident. However, he confirmed that he was dropped off by § 87(2)(b) and § 87(2)(b) in front of 1744 Clay Avenue in the Bronx. Moreover, § 87(2)(b) acknowledged that he handed § 87(2)(b) 100 dollars once he was outside of the vehicle. In return, § 87(2)(b) handed him a hat concealed in a clear plastic wrap through the car's window. § 87(2)(b) subsequently walked at a fast pace towards his building because he noticed an individual that requested him to open the door. § 87(2)(b) was not aware that § 87(2)(b) and § 87(2)(b) were arrested and he denied hearing sirens or seeing any officers during the incident.

Findings and Recommendations

Explanation of Subject Officer Identification

On both § 87(2)(b) s and § 87(2)(b) s arrest report, § 87(2)(a) 160.50. PO Almeida and PO Capellan were identified via Sgt. Arias' testimony in which he stated that he radioed for them to come on the scene (Board Review 20).

According to both of § 87(2)(b) s and § 87(2)(b) s CCRB testimony and § 87(2)(a) Gen. Mun. § 80-b(2), they alleged that two officers initially approached their vehicle almost simultaneously (Board Review 16 and 17). Both § 87(2)(b) and § 87(2)(b) corroborated that PO1, identified via investigation as Sgt. Arias, approached § 87(2)(b) on the passenger side of the vehicle first then a second officer approached § 87(2)(b) on the driver side. § 87(2)(b) described PO1 as a dark skin Dominican male, heavy set, 5'10" tall, bald, and appeared to be an older male (Board Review 16). § 87(2)(b) described PO1 as a Hispanic male, 5'11"-6' tall, with short black hair, slightly heavy set, and in his 40s-50s (Board Review 17).

The investigation determined that Sgt. Arias, PO Capellan, and PO Almeida were the only officers present on the scene of incident. Sgt. Arias worked solo and PO Capellan and PO Almeida were partners. PO Almeida is a white male, who is 5'10" tall, weighs 185 pounds, with brown hair, and was 32 years old at the time of incident (Board Review 05). PO Capellan is a Hispanic male, who is 5'7" tall, weighs 180 pounds, with black hair and brown eyes, and was 28 years old at the time of incident (Board Review 06). § 87(2)(b) s and § 87(2)(b) s descriptions of PO1 closely matched Sgt. Arias' physical appearance: black male, 5'10" tall, bald, weighs 200 pounds, and was 42 years old at the time of incident (Board Review 04).

§ 87(2)(b) stated that a White officer transported her and § 87(2)(b) back to the stationhouse. This was consistent with the all of the officers' testimonies, stating that PO Almeida transported the individuals.

§ 87(2)(b) acknowledged that there were three officers on the scene and a second RMP that arrived, but § 87(2)(b) only stated that there were two officers and did not mention a second RMP on the scene. Given § 87(2)(b) s lack of recollection of certain facts of the event, the investigations credited the officers' testimony in which Sgt. Arias was the initial officer that approached and interacted with § 87(2)(b) and § 87(2)(b). Moreover, PO Capellan and PO Almeida arrived on the scene several minutes after Sgt. Arias had already stopped the vehicle. Given the above, **Allegation A** was pleaded to only Sgt. Arias.

§ 87(2)(b) stated that it was PO3 who told them that they would be arrested if they returned to the location. § 87(2)(b) noted that PO3 was the officer that released them. She described PO3 as a Hispanic man who is approximately 6 feet tall, in uniform, stocky build, black short hair, and in his 40s (Board Review 17). The investigation identified PO3 to be PO Pineda based on his testimony in which he admitted that he was the only officer that physically released § 87(2)(b) and § 87(2)(b) from the stationhouse. Moreover, he was also the officer that prepared the arrest/release paperwork for both of them. PO Pineda is a Hispanic male, who is 5'11" tall, weighs 225 pounds, with brown hair and brown eyes (Board Review 03). PO Pineda stated that he was in plainclothes during the incident. However, according to Sgt. Arias, PO Almeida, and PO Capellan, the SNEU team was in uniform during the incident. Therefore, **Allegation D** was pleaded to PO Pineda.

Allegations not pleaded

Frisk and Search-

Sgt. Arias determined both § 87(2)(b) and § 87(2)(b) to be arrested once he ordered them to exit the vehicle. PO Almeida's and PO Capellan's purpose for responding to the scene was to place § 87(2)(b) and § 87(2)(b) under arrest upon the orders of Sgt. Arias. Therefore, since the frisk and search of § 87(2)(b) would have been a search incident to a lawful arrest at the time, the allegation was not pleaded.

Allegation A-Abuse of Authority: On Clay Avenue and East 175th Street, in the Bronx, Sgt.

Edward Arias stopped § 87(2)(b) and § 87(2)(b)

It is undisputed that Sgt. Arias approached § 87(2)(b)'s double parked vehicle in front of § 87(2)(b) a § 87(2)(b), located on the corner of Clay Avenue and East 175th Street, in the Bronx. Moreover, it also undisputed that § 87(2)(b) handed a package in exchange for a sum of money to § 87(2)(b).

In both of the civilians' statements, it was indicated that § 87(2)(b)'s vehicle was double parked in front of 1744 Clay Avenue in order to drop off § 87(2)(b) and § 87(2)(b). All acknowledged that § 87(2)(b) stuck her hand out of the window and handed § 87(2)(b) a hat inside a clear plastic bag (Board Review 16-18). All of the civilians denied that there were any other contents inside the bag. In exchange, § 87(2)(b) received 100 dollars in the form of \$10 bills (Board Review 16). § 87(2)(b) subsequently returned to his building and § 87(2)(b) and § 87(2)(b) proceeded down the street in their vehicle. Both § 87(2)(b) and § 87(2)(b) stated that § 87(2)(b) stopped the vehicle in front of § 87(2)(b) down the street. § 87(2)(b) stated that she shifted her car in park and double parked in front of § 87(2)(b) because she had to answer a phone call. At this point, Sgt. Arias approached their vehicle.

Sgt. Arias has conducted narcotics enforcement for approximately seven years, made over 200 drug-related arrests, and was involved in over 1000 drug-related arrests (Board Review 20). On the date of incident, Sgt. Arias supervised a team of six officers from the 46th Precinct Street Narcotics Enforcement Unit (SNEU). In Sgt. Arias' testimony, he confirmed that he was the first and only officer to observe § 87(2)(b) and § 87(2)(b)'s vehicle double parked in front of 1744 Clay Avenue. Sgt. Arias slowed down to observe the interaction between the passenger of the vehicle, identified as § 87(2)(b) via the investigation, and two male individuals outside, one is identified as § 87(2)(b) via the investigation. Sgt. Arias observed § 87(2)(b) handing § 87(2)(b) a small package/object in exchange for an unspecified amount of U.S. currency. Sgt. Arias described the exchange to be simultaneous. Sgt. Arias did not recall the color of the bag and did not see the content inside the bag. Sgt. Arias described the bag itself to be small and oval in shape, indicating that it was approximately six inches in diameter. Besides the aforementioned exchange, Sgt. Arias did not observe any further interactions. Sgt. Arias believed he had observed a hand to hand drug transaction at the time. Within less than a minute of observation, the vehicle drove off and the two males scurried back into the building. Sgt. Arias subsequently followed the vehicle without police lights or sirens engaged. Approximately one street block later, the vehicle double parked in front of § 87(2)(b) a § 87(2)(b) on Clay Avenue. Sgt. Arias stated that this was a known drug prone location. Sgt. Arias has not notified his team at this point and besides the two double parking violations, Sgt. Arias did not observe any additional violations. Sgt. Arias approached the vehicle for an investigation of the "sale" that he had just observed. Upon approaching the vehicle, Sgt. Arias saw two occupants inside the vehicle, one in the driver seat and one in the front passenger seat. Sgt. Arias did not observe any movements inside the

vehicle. Sgt. Arias approached the female passenger, identified as § 87(2)(b) via investigation, and asked what the exchange that had just occurred was. § 87(2)(b) told Sgt. Arias that § 87(2)(b) paid for a hat she gave him.

Reasonable suspicion that crime was about to be or had been committed is required for a vehicle stop, People v. Peterson 689 N.Y.S.2d 777 (1999) (Board Review 08). Courts have found that reasonable suspicion exists upon allegations of the exchange of an unidentified object for U.S. currency. However, there must be other corroborative factors in addition to the single transaction itself, People v. Dubois 35 Misc.3d 1230 (2012) (Board Review 10).

Sgt. Arias was conducting SNEU set operations with his team in the vicinity of the 46th Precinct when he observed a hand to hand transaction through a car window of money and an unknown content inside of a bag at a known drug prone location. Shortly after, the same vehicle double parked in front of a § 87(2)(b). Sgt. Arias' experience in narcotics investigations coupled with the aforementioned observations and the area to be a known drug prone location provided Sgt. Arias with enough reasonable suspicion to stop § 87(2)(b) and § 87(2)(b) for a further investigation. § 87(2)(g)

§ 87(2)(g)

Allegation B- Abuse of Authority: At the 46th Precinct stationhouse, Sgt. Edward Arias authorized the search of § 87(2)(b)'s vehicle.

Allegation C- Abuse of Authority: At the 46th Precinct stationhouse, PO Gary Capellan searched § 87(2)(b)'s and § 87(2)(b)'s bags.

It is undisputed that § 87(2)(b)'s car was searched by PO Capellan under Sgt. Arias' instructions and PO Capellan also looked inside the various bags inside the vehicle at the stationhouse.

§ 87(2)(b) and § 87(2)(b) both stated that the vehicle appeared to have been searched because the interior and their bags were disheveled (Board Review 16 and 17). § 87(2)(b) acknowledged that she had several prescription bottles inside a plastic bag that was originally on the floor of the vehicle, but the bag was on the seat when the vehicle was returned to § 87(2)(b) (Board Review 17). Both § 87(2)(b) and § 87(2)(b) denied having any contraband inside the vehicle.

In Sgt. Arias' testimony, he stated the he saw approximately more than twenty prescription bottles in "plain sight" on the floor of the vehicle and "all over the vehicle" during the car stop (Board Review 20). Sgt. Arias did not recall if he asked § 87(2)(b) or § 87(2)(b) about the prescription bottles. However, Sgt. Arias determined that a further investigation was necessary; therefore, he asked the driver of the vehicle, identified as § 87(2)(b) via investigation, for the vehicle's documents. § 87(2)(b) complied and retrieved the documents from the glove compartment. At this point, Sgt. Arias noticed a prescription bottle in the glove compartment and asked § 87(2)(b) to hand it to him. § 87(2)(b) complied. Sgt. Arias noticed that it was an oxycodone bottle prescribed to a male. None of § 87(2)(b)'s or § 87(2)(b)'s properties were vouchers at the stationhouse (Board Review 24). Sgt. Arias stated that § 87(2)(b) did not know who the male was and did not provide any explanation as to why the prescription bottle was in the

vehicle. At this point, Sgt. Arias determined that § 87(2)(b) and § 87(2)(b) were going to be under arrest and that a further investigation back at the stationhouse was needed. Subsequently, Sgt. Arias called PO Capellan and PO Almeida to come to the scene to place both occupants in handcuffs. At the stationhouse, Sgt. Arias stated that a further investigation into the prescription bottles was conducted to try and determine the contents inside. Sgt. Arias denied looking inside the vehicle himself, but he acknowledged that an officer had done so. However, Sgt. Arias did not know which officer searched the vehicle. Sgt. Arias acknowledged that there were several bags and clothing in the rear seats of the vehicle, but he denied looking inside the bags.

PO Capellan was informed by Sgt. Arias that § 87(2)(b) was being arrested because Sgt. Arias recovered several prescription bottles, some in which were prescribed to her while others were not. Subsequently, at the stationhouse, PO Capellan was instructed by Sgt. Arias to search the car for additional prescription pills or bottles (Board Review 22). PO Capellan looked underneath the seats, inside the glove compartment, the compartment on the side door, and the sun visor on the ceiling of the vehicle. Moreover, PO Capellan recalled that there were bags inside the vehicle and that he might have opened them. PO Capellan did not recover any contraband from his search.

§ 87(2)(a) 160.50

§ 87(2)(b)). Sgt. Arias stated that the investigation comprised of trying to determine the contents of the various bottles, if the two females had any contraband on their persons, and to determine the purpose of the exchange in front of 1744 Clay Avenue (Board Review 20). However, the police investigation found that the various prescription bottles were all prescribed to one of the female occupants and the empty bottle of oxycodone contained residue of an unknown substance. They were unable to determine the contents inside the bottle.

When officers have validly arrested an occupant of a car and have reason to believe that the car may contain evidence related to the crime for which the occupant was arrested for, the officers are permitted to search the car. Officers may conduct a search if it is “immediately apparent” to the officer that the item is evidence of criminality or contraband, People v. Carbone 184 A.D.2d 648 (1992) (Board Review 11). Officers are able to conduct a limited intrusion if there is probable cause to believe that a controlled substance was located inside the vehicle, authorizing the officers to conduct a warrantless search of the car and any containers it contained to retrieve evidence of the crime, People v. Smalls 975 N.Y.S.2d 396 (2013) (Board Review 09).

§ 87(2)(g)

§ 87(2)(g), § 87(2)(a) 160.50

§ 87(2)(g)
[Redacted]
[Redacted]
[Redacted]
[Redacted]

Allegation D- Abuse of Authority: At the 46th Precinct stationhouse, PO Carlos Pineda threatened to arrest § 87(2)(b) and § 87(2)(b)

It is in dispute whether PO Pineda made the threat to arrest § 87(2)(b) and § 87(2)(b) at the 46th Precinct stationhouse.

In § 87(2)(b)'s statement, she stated that PO Pineda informed her and § 87(2)(b) that they were going to be released soon after he was finished with the paperwork. Upon being released, PO Pineda told them not to return to Clay Avenue and if they were seen in the area again they will be arrested (Board Review 17). § 87(2)(b) did not know what prompted PO Pineda to make this threat. § 87(2)(b) did not mention the aforementioned threat in her CCRB statement or anything to the effect of speaking to any officers upon their release (Board Review 17).

§ 87(2)(b). PO Pineda subsequently released § 87(2)(b) and § 87(2)(b) and in return, they told him that they loved him. PO Pineda stated that no other officers assisted in releasing § 87(2)(b) and § 87(2)(b). PO Pineda denied telling § 87(2)(b) or § 87(2)(b) that they would be arrested if they returned to Clay Avenue and denied threatening to arrest them (Board Review 19). Moreover, PO Pineda did not hear any officers say the aforementioned threat and did not see any officers talking to either § 87(2)(b) or § 87(2)(b) upon their release.

§ 87(2)(g)
[Redacted]
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[Redacted]

Pod:

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date